IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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ORDER

1. **S.B. CIVIL WRIT PETTION NO.486/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

2. **S.B. CIVIL WRIT PETTION NO.487/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

3. **S.B. CIVIL WRIT PETTION NO.500/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

4. **S.B. CIVIL WRIT PETTION NO.374/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

5. **S.B. CIVIL WRIT PETTION NO.493/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

6. **S.B. CIVIL WRIT PETTION NO.492/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

7. **S.B. CIVIL WRIT PETTION NO.491/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

8. **S.B. CIVIL WRIT PETTION NO.488/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

9. **S.B. CIVIL WRIT PETTION NO.494/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.**

10.S.B. CIVIL WRIT PETTION NO.495/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.

11.S.B. CIVIL WRIT PETTION NO.497/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.

12.S.B. CIVIL WRIT PETTION NO.499/2006- MANAGER, SPINNING UNIT GANGAPUR NOW KNOWN AS SPINNING AND GINNING MILLS FEDERATION VS. STATE OF RAJASTHAN & ORS.

UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 16th October, 2006

PRESENT

HON'BLE MR.MOHAMMAD RAFIQ,J.

REPORTABLE

Mr.Rajesh Joshi, Advocate, for petitioners.
Mr.Tribhuwan Gupta, Advocate, for respondents.

BY THE COURT: -

All these writ petitions raise a common question of law having been filed by the common petitioner, although founded on different set of facts and, therefore, are being decided by this common judgment. In all the writ petitions, common orders passed by the Industrial-cum-Labour Court, Bhilwara (in short 'the Labour Court') have been challenged. For the purpose of convenience, however, facts of first of the above writ petitions namely, S.B. Civil Writ Petition No.486/2006 are being referred to in the judgment.

The petitioner is a registered Cooperative Society under the provisions of Rajasthan Cooperative Societies Act, 1965 (in short the Act of 1965). Prior to formation of SPINFED in the State of Rajasthan, there were four Cooperative Spinning Mills formed by the State Government which were registered under the Act of 1965. They were known as Gangapur Spinning Mills, Gulabpura Spinning Mills, Hanumangarh Spinning Mills and Gulabpura Cotton Ginning Pressing Cooperative Society Ltd.

Gulabpura. The Registrar of the Cooperative Societies in exercise of the powers conferred upon him under Section 17 of the Act of 1965 read with Rule 13 of the Rajasthan Cooperative Societies Rules, 1966 (in short 'the Rules of 1966') amalgamated all the aforesaid four Cooperative Societies into one entity now known as Rajasthan State Cooperative Spinning and Ginning Mills Federation Ltd, namely, the petitioner herein. This amalgamation was intended to improve financial condition of the societies. According to the petitioner-federation, nearly 4500 employees are engaged in its four units and in order to enable them to come out of the financial crisis and to avoid winding up and closure thereof, the petitioner-federation has taken loan amounting to crores of rupees from State Government and also from the other financial institutions. This was aimed at reviving the units. When this did not help, the State Government in exercise of its powers conferred under Section 3 of the Rajasthan Relief Undertakings (Special Provisions) Act, 1961 (in short the Act of 1961) declared the petitioner-federation as a relief undertaking by notification dated 19.10.2001 and thereby exempted it from the purview of

the laws like (i) Industrial Employment (Standing Order) Act, 1946, (ii) Industrial Disputes (Rajasthan Amendment) Act, 1958 and (iii) Industrial Disputes Act, 1947. This notification was initially issued for a period of one year but this period has been further extended by subsequent notifications each time for one year issued respectively on 16.10.2002, 18.9.2003, 5.10.2004 and 27.10.2005. The petitioner-federation therefore continues to be a relief undertaking even to this date.

While in seventeen cases in which impugned order has been passed the appropriate Government made reference of the industrial dispute to the learned Labour Court, Bhilwara on the question of validity of the respondent-workmen and further if their termination order was held illegal, what relief could be granted to him. In the remaining two however applications under Section 33C(2) of the Industrial Disputes Act, 1947 (in short the Act of 1947) were filed by the workmen. During the pendency of the proceedings in all these cases before the learned Labour Court, the petitioner-federation was declared a relief undertaking. It thereupon moved an application before

the learned labour court for staying the proceedings in the aforesaid cases on the ground that it was by virtue of Section 3 of the Act of 1961 exempted from the application of provisions of the Industrial Disputes Act, 1947 (in short the Act of 1947). The learned labour court initially vide its order dated 26.11.2000 stayed the proceedings and, thereafter, further extended this order of stay by order dated 13.10.2003. Lastly, when the Government vide its notification dated 27.1.1995 again extended the term for the petitioner-federation as a relief undertaking by one more year for the period from 12.10.2005 to 11.10.2006, the petitioner again requested the learned labour court for continuing the stay upto 11.10.2006. Such a request was made in all 19 cases including those out of which aforesaid 12 writ petitions arise. The learned labour court however after hearing the arguments of the parties and consideration of law on the subject vide a common order dated 23.11.2005 rejected the application for extension of stay in all these cases holding that the proceedings before the labour court under the Act of 1947 cannot be stayed for an indefinite period. Aggrieved by this common order passed by the learned

labour court, the petitioner-federation has preferred these writ petitions.

I have heard Shri Rajesh Joshi, learned counsel for the petitioner and Shri Tribhuwan Gupta, learned counsel for the respondents.

Shri Rajesh Joshi, learned counsel for the petitioner has argued that the petitioner-federation is passing through real financial crises and therefore efforts are being made unitedly by the Government and various financial institutions to revive it. Such an object was in the over all interest of large number of workers of the federation and the economy of the State. It is with this object in view that the State Legislature enacted the Act of 1961, which has received the assent of the President of India on 31st March, 1961. He argued that the Act of 1961 being a special law would prevail over all other general laws including the Act of 1947. It was argued that Section 3 of the Act of 1961 empowers the State Government to declare the petitioner – federation as a relief undertaking and accordingly,

the State Government initially declared the petitioner – federation as relief undertaking vide notification dated 19.10.2001 for a period of one year and, thereafter, extended such period from time to time for one year by each of the notifications issued from time to time and lastly by notification dated 27.10.2005. Period of such status of the petitioner – federation having now been extended upto 11.10.2006, the learned labour court was required to stay the proceedings at least upto that date. The impugned order is therefore liable to be quashed and set aside. It was argued that when the proceedings were earlier stayed by the learned labour court vide its order dated 26.11.2002 on consideration of the fact that petitioner – federation is a relief undertaking and would be exempted from the provisions of the Act of 1947, it had no power then to review the said order at a later stage.

Shri Rajesh Joshi further argued that none of the judgments relied upon by the learned labour court in the impugned order refusing to stay the proceedings pertains to the provisions of the Act of 1961 or any other analogous law.

All those cases were on generality of the subject with regard to practice and procedure of the labour courts and their duty to decide and adjudicate upon the reference which is made. He also referred to the statement of objects and reasons and preamble of the Act of 1961 to show that the said Act was enacted with a view to providing relief to industrial undertakings, which are on the verge of collapse. It was therefore argued that the writ petition may be allowed. Shri Rajesh Joshi, learned counsel for the petitioner has relied upon the Division Bench judgment of this Court in *Modern Syntax (I) Ltd. Vs. Debts Recovery Tribunal, Jaipur & Ors reported in RLR 2001(1) 476* and in *M/s. Jaysynth Dyechem Vs. Mewar Taxtile Mills Ltd reported in RLR 1987 (I) 513* and argued that the Act of 1961 being a special law, this Act would prevail upon all other general laws including the Act of 1947. According to Shri Rajesh Joshi, once the notification under Section 3 of the Act of 1961 was issued by the Government, the provisions of Section 4 of the Act would apply and the consequence given therein would immediately follow. According to Section 4, any laws mentioned in the schedule of the Act of 1961 and any

provisions thereof shall not apply to a relief undertaking and it shall be exempted thereform and further no suit or legal proceedings should be instituted or commenced or, if, pending, shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking. He therefore argued that the order passed by the learned labour court may be set aside and the proceedings pending before it be directed to be stayed till the petitioner – federation continues to remain a relief undertaking.

On the other hand, Shri Tribhuwan Gupta, learned counsel for the respondent – workmen in opposing the writ petitions supported the order passed by the learned labour court on the reasonings given therein. He argued that initially the labour court had by its order dated 26.12.2002 stayed the proceedings upto 11.10.2003. At subsequent stage however when occasion again arose to consider a similar request, the learned labour court was fully justified in deciding the matter afresh and in refusing to stay the proceedings for further period because the proceedings before the learned labour court under

the Act of 1947 could not stayed indefinitely. He argued that the Act of 1947 by itself is a special provision, which intended to assure timely disposal of industrial disputes and imparting justice to the working class by way of speedy remedy. According to Shri Gupta, the Act of 1947 being itself a special legislation and moreover being a central legislation, should prevail upon the State Legislation like the Act of 1961. He reiterated his reliance on all those judgments, which were cited before the learned labour court and were relied upon by learned labour court while refusing to stay the proceedings. Shri Gupta specifically drew attention of the court to that part of the notification issued by the State Government under Section 3 of the Act of 1961, which provides that the notification would have no effect on the entitlement of a workman to payment of wages pursuant to any law, legal proceedings, claim, settlement, award and standing order. According to Shri Gupta, apart from the reference cases, some of the cases arose out of proceedings under Section 33C(2), which pertain to payment of wages. The bar contained in Section 3 of the Act of 1961 as to maintainability of legal

proceedings with reference to Section 4 of the Act of 1961 would in any case, be not applicable to the proceedings under Section 33C(2). He therefore argued that the order passed by the learned labour court is perfectly legal and justified and the writ petitions are liable to be dismissed.

I have given my thoughtful consideration to the arguments advanced by both the learned counsel and perused the record.

The learned labour court while rejecting the application of the petitioner has not only taken into account the Section 3 of the Act of 1961, but has also taken into account the provisions contained in Section 4 of the Act of 1961. It has however, held that the reference made to it by the appropriate Government under Section 10 of the Act of 1947 and the application filed under Section 33C(2) for computation of the due amount are both required to be decided in a time bound manner. Section 10A of the Act of 1947 requires that if the appropriate Government has not prescribed any time limit for determination

of dispute, the reference has to be answered within a period of three months. The learned labour court noted although such period is extendable but the extension cannot be made for an indefinite time. Similarly, an application under Section 33C(2) is also required to be decided within a period of three months. The learned labour court has also relied on the provisions of Section 25J of the Act of 1947 which contains the provisions in relation to effect of laws inconsistent with Chapter VA of the said Act and provides that provisions of said Chapter would have effect notwithstanding anything inconsistent therewith contained in any other law including standing orders made under the Industrial Employment (Standing Orders) Act, 1946. This is however subject to proviso that in case the workman is entitled to benefits more favourable to him under any such other enactment, then those benefits to which he would have been entitled to under the Act of 1947, he shall continue to be entitled to such more favourable benefits. Sub-section (2) of Section 25J further provides that nothing contained in Chapter VA shall be deemed to affect the provisions of any other law for the time being in force in any State in so far as that law

provides for the settlement of industrial disputes, but the rights and liabilities of employers and workmen in so far as they relate to lay-off and retrenchment shall be determined in accordance with the provisions of this Chapter. The learned labour court therefore held that the notification issued under Section 3 of the Act of 1961 could not have the effect of permanently staying the proceedings pursuant to reference made under the Act of 1947 as the later Act, apart from being a Central enactment, is a labour welfare legislation. Even if there be any conflict between two, the Act of 1947 being more beneficial to the workman, would prevail. Moreover, there being no such provision in the Act of 1947 to stay the proceedings, the proceedings could not be stayed. The learned labour court also referred to Section 36B in support of its reasonings, which empower the appropriate Government to exempt conditionally or unconditionally any such establishment or undertaking or a class of establishments or undertakings from all or any of the provisions of the Act of 1947 by publishing notification in the official Gazette in that behalf. The learned labour court held that the notifications issued by the

Government under Section 3 of the Act of 1961 cannot be considered as one issued under Section 36B of the Act of 1947 and therefore, the proceedings before the learned labour court cannot be stayed.

The kind of cases that were pending before the learned labour court can be broadly divided into two categories; one category pertains to those reference cases wherein industrial disputes under Section 10 of the Act of 1947 have been referred to the learned labour court for adjudication whereas other category of cases are those where applications under Section 33C(2) have been filed for computation for any monetary benefit, which the workmen claim are due to be paid to them by the management. Presently, I shall take up the second category first for deciding these writ petitions.

In passing the impugned order, the learned labour court has referred to the judgment of the Uttaranchal High Court in the case of *Uptron India Ltd. Vs. Presiding Officer, Labour Court, Dehradun & Anr. reported in 2004-II-LLJ 378* and the

judgment of Calcutta High Court in *Bengal Immunity Limited Vs. Mukul Kumar Kar & Ors reported in 2004-II LLJ 381* wherein it was held that bar contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 as to maintainability of a claim before a court of law would not apply for recovery of the due payment of salary, leave enachment and gratuity to the workman. This issue should not detain me further because the Government itself in the notifications issued under Section 3 of the Act of 1961 from time to time excepted this category of the cases from the purview of bar contained in Section 4 of the said Act. A Division Bench of this court in *The State of Rajasthan & Anr. Vs. Jaipur Metals and Electrical Mazdoors Sangh & ors. reported in 2003 WLC (Raj.)(UC) 591* while dealing with the same objection with regard to maintainability of claim for payment of outstanding wages on account of bar contained in Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1995 held in para no.20 of the judgment that simply because a company is declared as sick industry, the relief of due wages cannot be denied to its workers and there is no bar against the

enforcement of the claims of wages of such workmen. It was held that status of an sick industrial company to be a sick company cannot come in the way and there is no embargo or any legal impediment against the enforcement of the claim of the wages of the workmen.

In view of the categorical stipulation contained in the notifications under Section 3 of the Act of 1961 issued by the Government and on the basis of pronouncement by the Division Bench of this Court, the applications filed by the workmen before the learned labour court under Section 33C(2) can be 'instituted or, commenced, if, pending, shall be proceeded with' notwithstanding the petitioner – federation having been declared as relief undertaking. The impugned order passed by the learned labour court in so far as it refuses to stay the proceedings under Section 33C(2) of the Act relating to payment of unpaid wages to the workman is therefore perfectly justified in law.

This now takes me to the first category of cases where

the proceedings pending before the learned labour court pertain to those cases wherein reference on industrial disputes was made by the appropriate Government under Section 10 of the Act of 1947 for adjudication by it.

Basically three reasonings have been given by the learned labour court in support of its order. First reason that has been assigned is that the Act of 1947 being a Central enactment and labour welfare legislation, it requires expeditious adjudication of the disputes and there being no provision of stay of proceedings under the Act of 1947, the provisions contained in the Act of 1961 cannot effect the proceedings before the learned labour court. A somewhat similar controversy cropped up before this Court in *M/s. Jaysynth Dyechem* (supra) wherein the validity of the Act of 1961 and the notification issued by the State Government under Sections 3 and 4 of the said Act was challenged by creditors of a company registered under the Indian Companies Act, 1956. An argument was raised that the matters relating to winding up of a company falls exclusively in Entry 43 of List I (Union List) of Schedule VII to the

Constitution and the Indian Companies Act having been enacted by the parliament providing for winding of companies along with their incorporation and regulation, no law affecting winding up can be enacted by State legislature. If any provision affects the winding of company, then making of such a provision would attract entry 43 (supra) within the exclusive domain of the Parliament and if any law is enacted by the State Legislature in any way, touching upon the winding up of any company, then such a law would be beyond the competence of the State legislature. In that case too, winding up proceedings pending before the company judge of this Court were stayed by virtue of provisions contained in Section 4(1)(b) of the Act of 1961 following the notification issued by the State Government under Section 3 of the said Act. This court on consideration the entire matter held as under: -

> "that if any law made by the State Government touches the domain of the Central Legislature or any law made by the Central Legislature touches the domain of the State Legislature then in that situation, the court is called upon to look to the substance of the law and determine the question as to whether the enacted law as such falls in which entry and the doctrine of pith end substance would

come into play and having regard to this doctrine, the controversy has to be resolved. It is true that by section 4(1)(b) pending winding up proceeding are affected. If this provision applies then the pending proceeding shall stand stayed and, new proceedings shall not be instituted or commenced and to that extent, it can be said that the provisions touches the winding up of companies falling within entry 43. The question is what is the true character of the Act. What is intended by the Act. For determination of the true character and the nature of the legislation, one should look to the whole of the Act including its preamble and as well as its objects and reasons. A perusal of the objects and reasons and the preamble would show that the Act has been enacted with a view to provide relief to certain undertakings which are on the verge of collapse which may result into un-employment and which may also result into nonproduction of the commodities for the manufacturer, of which they came into existence. In case, the companies or the undertakings are allowed to be wound up then in that situation there would be unemployment and the products which may be essential for the society would be deprived of those products. The State Government had come forward to provide relief to such undertakings. It may advance loan or provide other financial assistance or give any guarantees and thereby save those undertakings, for the time being and this can be done by issuance of the notification u/sec. 3 and the aggregate period under sub-sec. (2) of Sec.3 is 5 years. Sec.4 further provides for specifying the industrial relations and other facilities temporarily for relief undertakings. The application of certain laws may be stayed and even application of certain agreements, settlements and awards or standing orders any also be stayed or suspended. When laws can be suspended, when awards can be suspended and when standing orders can be stayed then u/sec.4(1)(b) it was

necessary to make a provision for staying pending or bar the institution or commencement of any suit or other proceeding. Viewed the light of the preamble and the statement of Objects and Reasons along with provisions of the Act, it would appear that the legislation was intended to prevent unemployment and the legislation was also intended to continue the industry or undertkaing to run so as to continue to manufacture the products by such industrial undertakings, the control of which has been declared by Parliament to be expedient in the public interest. Sec.2 of the Industries (Development and Regulation) Act, 1951 makes a provision for declaration as to control by the Union. It was declared by Sec. 2 and it is expedient in the public interest that the union should take in its control the industries specified in its schedule and in the first schedule in item 23(i),there is mention of the industry, Textile (including those dyed printed or otherwise processed) made pholly or in part of cotton including cotton yarn, hosiery and rope. Thus, it would appear that the law falling under entry 33 would be within the competence of the Central Legislature as the State legislature. Similarly entry 23 of List III of Schedule seventh deals with social security and social insurance, employment and unemployment. The object of the Act is to prevent unemployment. The true character of the legislation made by the State legislature is to make law in relation to the subjects falling under entry 23 and 33 although incidentally, it also just impinges upon the proceeding of winding up, which are regulated by the Companies Act, enacted by the Parliament under entry 43 of List I. This is only the incidentally effect and it is not the true nature of the law."

Their Lordships of the Hon'ble Supreme Court in the case

of *Doburg Lager Breweries Pvt. Ltd. Vs. Dhariwal Bottle Trading Co. reported in (1986) 2 SCC 382* while considering the similar notification issued under Section 3 of an analogous enactment from State of Maharastra specifically held that in respect of declaration made under Section 3, a relief undertaking means an industrial undertaking and consequence of such declaration is that any remedy for enforcement of any obligation incurred by an undertaking shall remain suspended. Their Lordships of the Hon'ble Supreme Court in para no.12 of the judgment has held as under: -

> "12.Section 1 of the Act sets out the short title of the Act and the extent of its application. Section 2 of the Act defines 'industry' and 'relief undertaking'. 'Relief undertaking' means an industrial undertaking in respect of which a declaration under Section 3 is in force. Section 3 of the Act and the material part of Section 4 have already been set out above. Section 3 which is a self-contained one refers to the industrial undertakings in respect of which a declaration may be made under it. It is not controlled by the Preamble to the Act. An industrial undertaking which may be declared as a relief undertaking under Section 3 may be of two kinds. It may be an industrial undertaking started, acquired or otherwise taken over by the State Government and carried on or proposed to be carried on by the State Government or under its authority. It may also be an industrial undertaking

> to which any loan, guarantee or other financial assistance has been provided by the State Government. There should be a declaration that an industrial undertaking of either kind should be conducted to serve as a measure of preventing unemployment or an unemployment relief. Then such an undertaking will be deemed to be a relief undertaking for the purposes of the Act. The consequences of such declaration are contained in Section 4 of the Act one of them being that the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, decree, order, award, submission, settlement, standing order or other provision whatsoever any right, privilege, obligation, or liability accrued or incurred before the undertaking was declared as relief undertaking and any remedy for the enforcement thereof shall be suspended and all proceedings relative thereto pending before any court, tribunal, officer or authority shall be stayed. A notification issued under sub-section (1) of Section 3 is renewable by like notification from time to time for further periods not exceeding twelve months at a time, so however that for all the periods the aggregate does not exceed fifteen years. It is seen that the whole object of the Act is to subserve the public interest and in particular to prevent unemployment or to grant unemployment relief."

A similar controversy came up before the Division Bench of this Court in *Modern Syntax (I) Ltd.* (supra). In that case, the State Bank of Bikaner and Jaipur had filed an original application against Modern Syntax (I) Ltd. for recovery of

Rs.25,86,92,370/- some time in the year 2000. An objection was raised on behalf of Modern Syntax (I) Ltd. that since the Government had issued notification under Section 3 of the Act of 1961 on 15.2.2000 declaring Modern Syntax (I) Ltd as a relief undertaking, therefore, the original application for recovery was not liable to be proceeded owing to bar contained in Section 4(1)(b) of the Act of 1961. The Debts Recovery Tribunal, Jaipur rejected the application by its order dated 13.10.2000 holding that the provisions of the Act of 1961 cannot apply to a legal proceeding pending under Section 19 of the Act of Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (in short the Act of 1993) and therefore, such proceedings could not be stayed. In that case too an argument was raised on behalf of the bank that the Act of 1961 being a State legislation cannot operate against the provisions of the Act of 1993, which is a Central Act. Reference was in particular made to Section 34 of the Act of 1993 characteristics of which are in someway similar to Section 25J of the Act of 1947. The Division Bench elobrating upon the object of the Act of 1961 and the extent to its applicability in the context of

arguments raised before it in para no.26 held as under:-

> "26.As seen above,the effect of the notification is that any right, privilege, obligation or liability accrued or incurred by a notified company, before it is declared a relief undertaking and any remedy for enforcement thereof becomes suspended and consequentially even the winding up proceedings against such company can be stayed. As a result of the notification, the State Government gets the power to direct that notwithstanding any law, usage, custom, contract, instrument, award, statement or other provisions, whatsoever, any right, privilege, obligation or liability accrued or incurred before the undertaking was declared as relief undertaking, all proceedings related thereto pending before any Court, Tribunal, Officer or Authority shall be stayed. The same view has been taken by our High Court in the case of M/s. Jaysynth Dyechem & Ors. Vs. Mewar Textile Mills Ltd. (supra)."

In Modern Syntax (I) Ltd (supra), an argument was also advanced on behalf of the bank that there being repugnancy between the two Acts that is the Act of 1993 and the Act of 1961 and the Act of 1993 should have an overriding effect over the Act of 1961 in view of its Section 34 except in relation to those enactments specifically included in its sub-section (2). Repelling the said argument, the Division Bench held in paras no.34 and 35 as under: -

"34. The repugnancy referred to under Article 254 of the Constitution is of a specific kind i.e. a repugnancy between the Union and State law must have reference only to the Concurrent Lists. As observed in the case of Teekaramji by the Supreme Court there can be no question of repugnancy under Article 254 of the Constitution of India, where the Parliament and the State Legislatures occupy different fields or deal with different matters and where there is no direct inconsistency in actual terms of such Acts.

35. The Supreme Court in the case of Doburg Lager Breweries Pvt. Ltd. (supra) held that Relief Undertaking Acts are legislations enacted under Entry 23 of List III of the Concurrent list. Thus, while the substantive part of the provisions which deal with the State's competence to declare certain undertakings as relief undertakings for preventing unemployment represent an exercise of the State legislature's power under Entry 23 of Concurrent List III, as far as provisions with respect to barring of legal proceedings are concerned, represent an exercise of power under Entry 65 of List II of the Constitution."

The Division Bench further held in para no.38 as under : -

"Considering the arguments advanced by the learned counsel appearing on either side, it is clear that it is impossible to state that both legislations are an emanation of the power under the Concurrent List. Clearly enough, they do not represent a case of absolute emanation of power

under Concurrent List. Except for one part of the State Act which represents an exercise of power under the Concurrent List in all other respects the two legislations represent an exercise of power under different Entries and Lists I and II. Thus, the very first requirement of Article 254 that both legislations should be with respect to Entries under the Concurrent List, before a plea of repugnancy is raised, is wholly unsatisfied. It has not been established that both legislations represent an exercise of power under the same Entries of the Concurrent list and the basic requirement in this regard as held by the Supreme Court in the case of M/s. Hoechest Pharmaceuticals Ltd. Vs. State of Bihar (supra) is that both legislations should occupy the same field and both legislations should be with respect to the same matter under the Concurrent List. In our opinion, the two legislations in question deal with two separate and distinctive matters. The said legislations also occupy two different fields. The Central legislation occupies the field of Banking under List I and provides for the incidental issue of adjudication of banking disputes, while the State legislation occupies the field of social security and providing unemployment relief falling under the Concurrent List. Thus, the Parliamentary legislation and the State legislations occupy different fields and dealwith separate and distinctive matters. Thus, in our opinion, the plea of repugnancy is not available to the respondent Bank. The Supreme Court held that once a notification is issued it operate so as to create an absolute moratorium against the continuance of any proceedings against a relief undertaking. The same proposition was laid down in the case of Doburg Lager Breweries Pvt. Ltd. (supra). Thus, in view of the above rulings, the argument of the respondent Bank has no merit."

It must be noted that the Act of 1961 is a special legislation enacted with a view to making special provision to enable certain industrial undertakings to attain revival and to offer continued employment to their employees by declaring them as Relief Undertakings and for other matters connected therewith. This Act received assent of the President on 31st March, 1961. This Court in M/s. Jaysynth Dyechem (supra) has already held that this Act is intra vires and valid piece of ligislation. The Division Bench of this Court in Modern Syntax (I) Ltd. (supra) has ruled in favour of legislative competence of the State Legislature for enacting the Act of 1961 and has further held that there was no repugnancy between the State and the Central enactments like the Act of 1993 and the Act of 1961 because both of them have been enacted with reference to separately demarcated legislative fields and operate within their own spells. So far as the Industrial Disputes Act, 1947 is concerned, the same has been enacted with reference to Entry 22 of List III (Concurrent List) of VII Schedule of the Constitution of India. Although it is true that Sections 3 and 4 of the Act of 1961 make some provisions which has effect of

touching upon subject of industry but this is merely an incidental trenching on the legislation on the subject contained in Entry 22 of List III, which entry is again to be found in the Concurrent List. It should be obvious from the Act of 1961 that in order to effectively achieve the aims and objects for which the said Act has been made, the legislature has to make some incidental provisions with regard to such industries which may eventually effect the subject of trade unions in relation to their industrial and labour disputes as contained in Entry 22 of List III (supra). The Act of 1961 however also owes its enactment to very same List III of VII Schedule with reference to the demarcated legislative power in its Entry 23 and 33. It should thus be clear that power of enactment for both the Act, i.e., the Act of 1961 and the Act of 1947 is traceable to common list III namely the Concurrent List, though both of them have been enacted for different purposes. While the the object of enacting the Act of 1961 has been described as "special provision" to enable certain industrial undertakings to attain revival and to offer continued employment to their employees by declaring them as relief undertaking and for other matters connected

therewith, the Act of 1947 has been enacted which the objectof making provision for the investigation and settlement of the industrial disputes and for certain other purposes. Needless to say, two enactments by the very nature of their objects operate in different spheres and do not in any manner come in conflict with each other.

Their Lordships in *National Engineering Industries Ltd. Vs. Shri Kishan Bhageria & Ors reported in AIR 1988 SC 329* while considering a similar question, albeit in the context of suggested repugnancey between the Act of 1947 (Central Act), which was the earlier enactment and the Rajasthan Shops and Commercial Establishment Act, 1958 (State Act), which was a later enactment in para no.12 of the judgment observed as under: -

> "12. It has to be borne in mind that S.2A of the Act was amended to permit individual workman to ask for a reference in the case of individual dispute. This amendment was assented to by the President on 1st of December, 1965. The Rajasthan Act received the assent of the President on 14th of July, 1958. On 8th March, 1972 Chapter 6A including S.28A was inserted in the Rajasthan Act. Therefore

> the material provision of the Rajasthan Act is the subsequent Act. Under Art. 254(2) of the Constitution if there was any law by the State which had been reserved for the assent of the President and has received the assent of the President, the State law would prevail in that State even if there is an earlier law by the Parliament on a subject in the Concurrent List. It appears that both of these Acts tread the same field and if there was any conflict with each other, then S.28A of Rajasthan Act would apply being a later law. We find, however, that there is no conflict."

A Division Bench of this Court in *General Manager, Lake Palace Hotel, Udaipur & Ors. Vs. Ranjit Singh reported in 192(3) WLC (Raj.) 96* also had also occasion to consider a similar question with regard to alleged repugnancey between the Industrial Disputes Act, 1947 and the Rajasthan Shops and Commercial Establishment Act, 1958 and observed in para no.30 as under: -

> "____that the question of repugnancy arises only in connection with the subjects enumerated in the concurrent list of the seventh schedule and ordinarily if any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, then the law made by the Parliament prevails and the law made by the Legislature of a State to the extent of repugnancy is held to be void but this rule is subject to the

> provision of the said clause 2 of Art.264 which provides where the later legislation of a State which respect of any of the matters enumerated in the concurrent list has been reserved for consideration of President and has received the assent then such later statute made by the State Legislature will prevail in that State."

In the light of the law enunciated above, it is significant to note that clause (2) of Article 254 provides that where a law made by the Legislation of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament on an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State. The Act of 1961 having received the assent of the President on 31st March, 1961 would therefore, prevail in the State of Rajasthan even if there be any conflict with any provision contained in the Act of 1947, which is Central enactment. This is subject to only one rider which is contained in proviso to clause (2) of Section 254 which provides that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same

matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

In the situation like this, their Lordships of the Hon'ble Supreme Court in the case of *ITC Ltd. VS. Agricultural Produce Market Committee & Ors. reported in (2002) 9 SCC 232 (Constitutional Bench)* while dealing with the question of legislative competence and with respect to conflict between two enactments specially when the issue arises with regard to interpretation of different entires in the same list, made following observations:

> "It is a well-recognised principle that the language of an entry should be given the widest scope and each general word should be interpreted to extend to all ancillary or subsidiary matters which can fairly and reasonably be comprehended in it. The entries in the lists should be read together without giving a narrow or restricted meaning to any of them. Powers of the Union and the State Legislatures are both expressed in precise and in definite terms and, therefore, there can be no reason in such a case in giving broader interpretation to one rather than to the other. It is only when an apparent overlapping occurs that the doctrine of "pith and substance" has to be applied to find out the true nature of legislation and the entry within which it would fall. When different entires in the same list crop up for

> consideration the usual principle followed is that each particular entry should relate to a separate subject or group of subjects and every attempt should be made to harmonise different entries and to discard a construction which will render any of the entries ineffective."

The State Government by issuing notification under Section 3 does not permanently debar the legal proceedings under the provisions of the Industrial Disputes Act, 1947. Suspension of such legal proceedings is only co-terminus with the time till the concerned industry remains a relief undertaking. This does not therefore take away a remedy available to a workman permanently. Movement the industry seize to be a relief undertaking, proceedings before the learned labour court or the industrial tribunal, as the case may be, under the provisions of Industrial Disputes Act would stand revived. In a situation like this, endeavor of the courts should be to apply the principle of harmonious interpretation to make both the enactments workable. Since legislative compliance for enacting both the Acts in pith and substance emanate from demarcated area of legislative power referable to separate

entries though in the same concurrent list, there does not arise any question of conflict between the two, let alone any repugnancy. As held by their Lordships of the Hon'ble Supreme Court in ITC Ltd. (supra) a duty is cast on the courts to harmoniously construe two enactments and the provisions contained therein and therefore, it cannot be accepted that the proceedings before the labour court could be continued even when the industry concerned has been declared as a relief undertaking.

Adverting now to the conclusion arrived at by the learned labour court that notification issued under Section 3 of the Act of 1961 by itself cannot be considered as a notification under Section 36B of the Act of 1947, it is to be noted that Section 36B inter alia provides that where the appropriate Government is satisfied in relation to any industrial establishment or undertaking or any class of industrial establishments or undertaking carried on by a department of that Government that adequate provisions exist for the investigation and settlement of industrial disputes in respect of workmen

employed in such establishment or undertaking or class of establishments or undertaking, it may, by notification in the Official Gazette, exempt, conditionally or unconditionally, such establishment or undertaking or class of establishments or undertakings, from all or any of the provisions of the Act. It would thus be evident from the very language employed in Section 36B that this provision has been incorporated in the said Act with an altogether different purpose. This simply pertains to the remedy of disputes in respect of workmen employed in an establishment or undertaking carried on by a department of the Government where already adequate provisions exist for investigation and settlement of industrial disputes. Such was not a case before the learned labour court in the present matter because the object for issuing notification under Section 3 of the Act of 1961 is entirely different than what is contained in Section 36B. Observations made by learned labour court in this regard are far too perfunctory to be of any relevance to the controversy involved in this matter.

The learned laobur court has made reference to the

judgments of this court in *Rambag Palace Hotel Vs. State of Rajasthan reported in 2000(1) LLJ 1165* and *Moti lal Vs. State of Rajasthan reported in 2005(5) RDD 1117.* Both these judgments turned out on their own facts and merely decided that once a reference is made to the labour court or industrial tribunal, it is obligatory for it to answer the reference under Section 10(1)(c) on merits of the case after proper adjudication. Learned labour court however could not over come the bar contained in Section 4 of the Act of 1961 by recourse to such a law.

Upshot of the above discussion is that all the aforesaid writ petitions are allowed. The impugned order passed by the learned labour court in so far as it refuses to stay the proceedings in the cases of reference submitted to it under Section 10 of the Act of 1947 is quashed and set aside and the proceedings before the learned labour court in these cases is directed to be held in abeyance/stayed till the petitioner – federation continues to remain a relief undertaking in the meaning of Section 3 of the Act of 1961. The learned labour

court however would be at liberty to proceed with and decide the applications filed under Section 33C(2) in relation to claim of payment of unpaid wages of the workmen.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-